

SHERIFFS: Sheriffs allowed fees only upon strict compliance with statute.

FEES:



November 12, 1946

Mr. Ben B. Stewart
Acting Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Stewart:

Your letter of recent date, requesting an opinion of this office as to whether or not the Sheriff of Cole County is entitled to a \$3.00 fee for persons sentenced by the Circuit Court to the Penitentiary, under facts set out in your letter, reads, in part, as follows:

"We have a matter in question relative to granting receipts to Sheriffs to collect fees from the State Auditor, upon receipt of a commitment paper giving a convict an additional sentence after he has once been committed to the Penitentiary.

"When a convict escapes or commits another crime while in the Penitentiary, or if a charge is pending against him after he has been committed and is a case to be tried in the Cole County Circuit Court, we receive instructions by telephone to produce such a convict in Court. An Officer from this institution delivers the convict to Court and returns him after the Court proceedings. If the convict is convicted and given another sentence, the Sheriff of Cole County delivers the new commitment paper

and requests a receipt to collect his fees.

"Should we grant a receipt in such a case? * * * * *

Your question appears in the first part of your letter, and, therefore, the last two paragraphs are omitted.

Section 13413, R. S. No. 1939, in part, reads as follows:

"* * * For the services of taking convicts to the penitentiary, the sheriff, county marshal or other officer shall receive the sum of three dollars per day for the time actually and necessarily employed in traveling to and from the penitentiary, * * * * * and before any claim for taking convicts to the penitentiary is allowed, the sheriff, or other officer conveying such convict, shall file with the state auditor an itemized statement of his account, in which he shall give the name of each convict conveyed and the name of each guard actually employed, with the number of miles necessarily traveled and the number of days required, which in no case shall exceed three days, and which account shall be signed and sworn to by such officer and accompanied by a certificate from the warden of the penitentiary, or his deputy, that such convicts have been delivered at the penitentiary and were accompanied by each of the officers and guards named in the account. * * * * *

This section relates to fees of sheriffs for their services in criminal cases. In that part quoted it will be noticed that such fee is allowed only for the time actually and necessarily employed in traveling to the penitentiary.

It will be further noted that in the above section the account for such services shall be signed and sworn to by such officer and accompanied by a certificate from the warden of the penitentiary, or his deputy, that such convicts have been delivered to the penitentiary and were accompanied by each of the officers and guards named in the account. It would not be proper for such an affidavit referred to above to be made in the event such officer was not actually employed in taking convicts to the penitentiary.

Section 13415, R. S. Mo. 1939, provides:

"No sheriff or ministerial officer in any criminal proceeding shall be allowed any fee or fees for any other services than those in the two preceding sections enumerated, or for guards not actually employed."

In the case of Nodaway County v. Kidder, 129 S.W. (2d) 857, the court, at l. c. 860, said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S.W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S.W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W.

532, 534; State ex rel. Linn County v.
Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams
v. Chariton County, 85 Mo. 645."
(Emphasis ours.)

The law seems to be well settled that a public officer claiming compensation for official duties must point out the statute authorizing such payment, and, in order for the officer to be entitled to such fee, the statute must be strictly construed.

Therefore, if the Sheriff of Cole County is not actually employed and does not actually travel in taking a convict to the penitentiary under commitment of sentence, but such duty is performed by a guard of that institution, then the Sheriff is not entitled to compensation.

CONCLUSION

Therefore, it is the opinion of this department that if the Sheriff does not comply with the statute by taking the convict on a commitment of sentence to the penitentiary, after conviction, he is not entitled to a fee.

Respectfully submitted,

GORDON P. WEIR
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APPROVED:

J. E. TAYLOR
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GPW:CP